

**Office of Zoning and Administrative Hearings  
Stella B. Werner Council Office Building  
Rockville, Maryland 20850  
(240) 777-6660**

## HEARING EXAMINER'S REPORT AND RECOMMENDATION

## TABLE OF CONTENTS

I. STATEMENT OF THE CASE .....	3
II. BACKGROUND .....	4
A. The Subject Property and Neighborhood.....	4
B. MasterPlan.....	11
C. Proposed Use.....	12
D. Site Entrance and Parking .....	17
E. Landscaping and Lighting .....	17
F. Development Standards.....	<b>Error! Bookmark not defined.</b>
G. Traffic and Environment .....	21
H. Community Participation.....	<b>Error! Bookmark not defined.</b>
III. SUMMARY OF HEARING .....	23
IV. CONCLUSIONS.....	30
A. Standard for Evaluation .....	30
B. Specific Standards .....	32
C. General Standards.....	34
V. RECOMMENDATIONS.....	40

## I. STATEMENT OF THE CASE

Petition S-2740, filed September 11, 2008, requests a special exception under Section 59-G-2.21 for a charitable or philanthropic institution, to be operated in an existing structure located at 8300 Woodmont Avenue, Bethesda, Maryland, on property known as Lot 48, Block 2, Northwest Park Subdivision, Tax Account No. 07-03379057, in the PD-75 Zone. The Petitioner, Children's Inn at NIH, Inc. (the "Children's Inn"), seeks to use an existing single-family residential structure to provide free housing for critically ill children who are receiving treatment at the National Institutes of Health ("NIH") and their families. This dwelling, to be known as Woodmont House, would be an extension of the existing Children's Inn facility on the campus of the NIH, which does not have enough space to accommodate all the patients in need of local housing.

Technical Staff of the Maryland-National Capital Park & Planning Commission ("M-NCPPC") reviewed the present petition and, in a report dated January 5, 2008, recommended *approval* with five conditions. See Ex. 27.<sup>1</sup> Staff provided supplemental information, in response to questions from the Hearing Examiner, on January 21 and 25, 2009. See Exs. 31-33. At its regular meeting on January 15, 2009, the Montgomery County Planning Board voted 5 to 0 to recommend *approval*, but with only two of the conditions recommended by Technical Staff. See Ex. 29. The Planning Board's recommendation letter explains that Conditions 2 and 3 as recommended in the Staff Report addressed right-of-way dedication and subdivision issues that were more appropriately addressed at subdivision than during this special exception proceeding. See *id.* An application is currently pending for revision of the existing subdivision approval for a larger property of which the subject site is a part. See Staff Report at 6. It is the Planning Board's position that in cases subject to subdivision review, dedication issues should not be made a condition of special exception approval. See *id.* The Hearing Examiner is substantially in agreement with this position.

The Planning Board also addressed Staff's recommended Condition 5, which directed the Petitioner to unify the design of the fence along the property's Woodmont Avenue frontage by

---

<sup>1</sup> The Staff Report is quoted and paraphrased liberally in Part II of this report.

replacing one section made of wood with decorative iron railings, to match the rest of the fence. The Planning Board found that the wooden section of fence serves the important function of providing privacy for some of the first-floor bedrooms, and should be preserved. See *id.* The Planning Board recommended imposing only Conditions 1 and 2 from the Staff Report, which address general limits on the size of the operation and the provision of bicycles and related accessories. See *id.*

On October 10, 2008 the Board of Appeals (“Board”) scheduled a public hearing in this matter for January 26, 2009, to be conducted by a hearing examiner from the Office of Zoning and Administrative Hearings. The hearing was convened as scheduled, at which time testimony and other evidence were submitted in support of the proposed special exception. No opposition was expressed at the public hearing, nor is any reflected in the record. The record was held open for one week to receive the transcript and closed on February 2, 2009.

## **II. BACKGROUND**

For the convenience of the reader, background information is grouped by subject matter.

### ***A. The Subject Property and Neighborhood***

The property within the proposed special exception boundaries ( the “special exception site”) is an area of approximately 0.17 acres of land that is part of a 0.48-acre property that was rezoned to the PD-75 Zone (Planned Development, 75 dwelling units per acre) in 2004, in Local Map Amendment Case No. G-808. The special exception site is developed with a 7,000-square foot, three-story, single-family dwelling with seven bedrooms, five bathrooms, common areas, seven parking spaces in a ground-level garage, and two small outdoor patios. The remainder of the larger property (the “combined property”) is currently occupied by a small office building, parking and driveways.

The Development Plan that was approved for the combined property in the 2004 rezoning maintained the existing single-family home in the northern part of the site, and provided for construction of a townhouse community in the southern part of the site. See Tr. at 44-45. That Development Plan was amended in 2007, in Development Plan Amendment Case No. DPA 06-01, to

replace the townhouses with a 46-unit condominium building and a 1,400-square-foot restaurant. See Tr. at 44-45; Staff Report at 6. An application is currently pending to approve a site plan for the combined property to allow implementation of the Development Plan approved in 2007. See Staff Report at 6. An additional application is pending to revise the subdivision approval for the combined property to incorporate former public right-of-way that has been acquired from Montgomery County. See *id.*

The combined property is located at the northwest corner of the intersection of Woodmont Avenue and Battery Lane in Bethesda. It is almost entirely paved, and has a gradual slope downward from east to west and from north to south along Woodmont Avenue. The site contains no significant vegetation, erodible soils, wetlands or streams. The special exception site has approximately 125 feet of frontage along Woodmont Avenue, to the east, but its vehicular access is from Battery Lane, on the west side of the site, via a 20-foot wide, 240-foot long easement. To the north, the special exception site abuts a large grassy area on the campus of the NIH. To the west, it abuts a multi-family residential building with which it shares a driveway. To the south, the special exception site abuts the portion of the combined property that has been approved for a condominium building. Across Woodmont Avenue, the special exception site confronts a property that has been cleared for construction of a nine-story multi-family building, although construction is currently on hold. See Tr. at 52. The photographs that follow depict the subject site and its surroundings.

[This area intentionally left blank]

**Aerial Photograph Depicting General Location of Site, from Staff Report at 7  
(white arrow correctly shows location of special exception site)**



**Aerial View of Combined Property and Immediate Surroundings, Ex. 9(c)**



**Front of Woodmont House as Seen from Woodmont Avenue, Ex. (9)(g)**



**Rear of Woodmont House, as Seen from Adjacent Parking Lot, Ex. 9(f)**



**Rear Corner of Woodmont House Looking Southeast Towards Small Office**



**Building to be Replaced by Condominiums. Ex. (9)(e)**



**Side View of Woodmont House from Near Battery Lane Driveway Entrance. Ex. (9)(d)**



**Side View of Woodmont House as Seen from NIH, Looking South. Ex. (9)(i)**



**View from Woodmont House Exterior Patio Looking North Towards NIH. Ex. (9)(h)**



Technical Staff and Petitioner's land planner describe the general neighborhood of the site as an area bound by the NIH campus to the north, Wisconsin Avenue to the east, Old Georgetown Road to the west and Rugby Avenue to the south. In light of the modest levels of activity expected with the proposed use, the Hearing Examiner agrees with this neighborhood description, with the addition of the directly confronting property on the east side of Wisconsin Avenue. An adjoining property such as NIH would normally be considered part of the relevant neighborhood, but given its immense size and the fact that the part of the campus nearest the subject site is all open space, it is apparent that NIH would not suffer any adverse effects from the proposed use. It is also apparent from the nature of the use that it would significantly benefit NIH's mission.

The general neighborhood is characterized by a mixture of residential, commercial and institutional uses. In addition to the adjoining and confronting properties described above, the neighborhood contains single-family homes along South Brook Lane to Old Georgetown Road, three-story to six-story apartment buildings along Battery Lane, the Springhouse Assisted Living Facility three or four lots west of the subject site, some larger 10 to 14-story residential buildings on Battery Lane known as the Whitehall Condominium, the Bethesda-Chevy Chase Rescue Squad and a small townhouse subdivision adjacent to the fire station. See Tr. at 58-59.

### ***B. Master Plan***

The subject property is within the area covered by the *2006 Woodmont Triangle Amendment to the Sector Plan for the Bethesda CBD* (the "Sector Plan"). Technical Staff found the proposed special exception to be consistent with the Sector Plan's vision and recommendations. See Staff Report at 8. In particular, Staff found that the proposed use would be consistent with the Sector Plan's recommendation for building heights to step down from the Metro station area to the edges of the central business district ("CBD"), and the plan's recommended height limit for the area including the special exception site of 65 feet. The existing house on the special exception site is approximately 38 feet in height, much lower than buildings near the Metro, and the site is located at the edge of the CBD.

Staff suggested that the combined property could be used to satisfy the Sector Plan's recommendation for enhanced pedestrian and bicycle connections to the NIH campus, but it appears that this recommendation is moot, given that the NIH campus is now fenced and gated. See Staff Report at 8; Ex. 32. Technical Staff noted that the special exception proposal includes streetscape along Woodmont Avenue and Battery Lane, as called for in the Sector Plan. See Staff Report at 9.

Petitioner's land planner points out that the proposed special exception would increase housing density on the special exception site and provide a type of housing not previously available in downtown Bethesda, consistent with the Sector Plan's recommendation to increase the supply and range of housing opportunities in the study area. See Ex. 12 at 7-8.

### ***C. The Proposed Use***

The Children's Inn is a private, tax-exempt non-profit corporation whose primary function is to provide social and benevolent services to critically ill children who are receiving treatment at the NIH, and their families. The Children's Inn operates a residence on the NIH campus that has 59 bedrooms, each set up like a hotel room with a private bathroom, as well as extensive common spaces such as a kitchen, a play room for young children, a teen room, a game room, a library, a business center, an arts & crafts studio, a multi-purpose room and an exercise room. In 18 years of operation, the Children's Inn has provided housing to 8,684 seriously ill children and their families from all 50 states and 74 foreign countries, free of charge. See Ex. 3. Programs at the Inn are staffed by employees and an extensive list of volunteers. The Inn's mission is to keep children together with their families during serious illness, reduce stress, and facilitate healing through mutual support. It aims to provide psycho-social support and a sense of normalcy during an extended medical crisis, by providing a residential setting more conducive to normal living than a hotel room. The patients who stay at the Inn range in age from three days to 26 years old, and almost all suffer from life-threatening illnesses that have not responded to conventional treatment. For the residents of the Children's Inn, the NIH is their last and best hope for survival. See *id.*

The Children's Inn was expanded in May 2004, but this has not fully responded to capacity problems at the Inn, which are caused in part by new treatment protocols that require children to stay in the Bethesda area for increasing periods of time, often 12 to 18 months and sometimes up to two years. The Children's Inn has adopted a length of stay policy with a 120-day limit, although this is not a hard and fast rule. See Ex. 3; Tr. at 16-17. The proposed Woodmont House facility would operate much like the Inn, but would be intended for patients who have transitioned from an acute phase of their illness to a more stable phase, still requiring medical intervention but with a lower level of support. Woodmont House residents are expected to stay an average of about six months. See *id.*

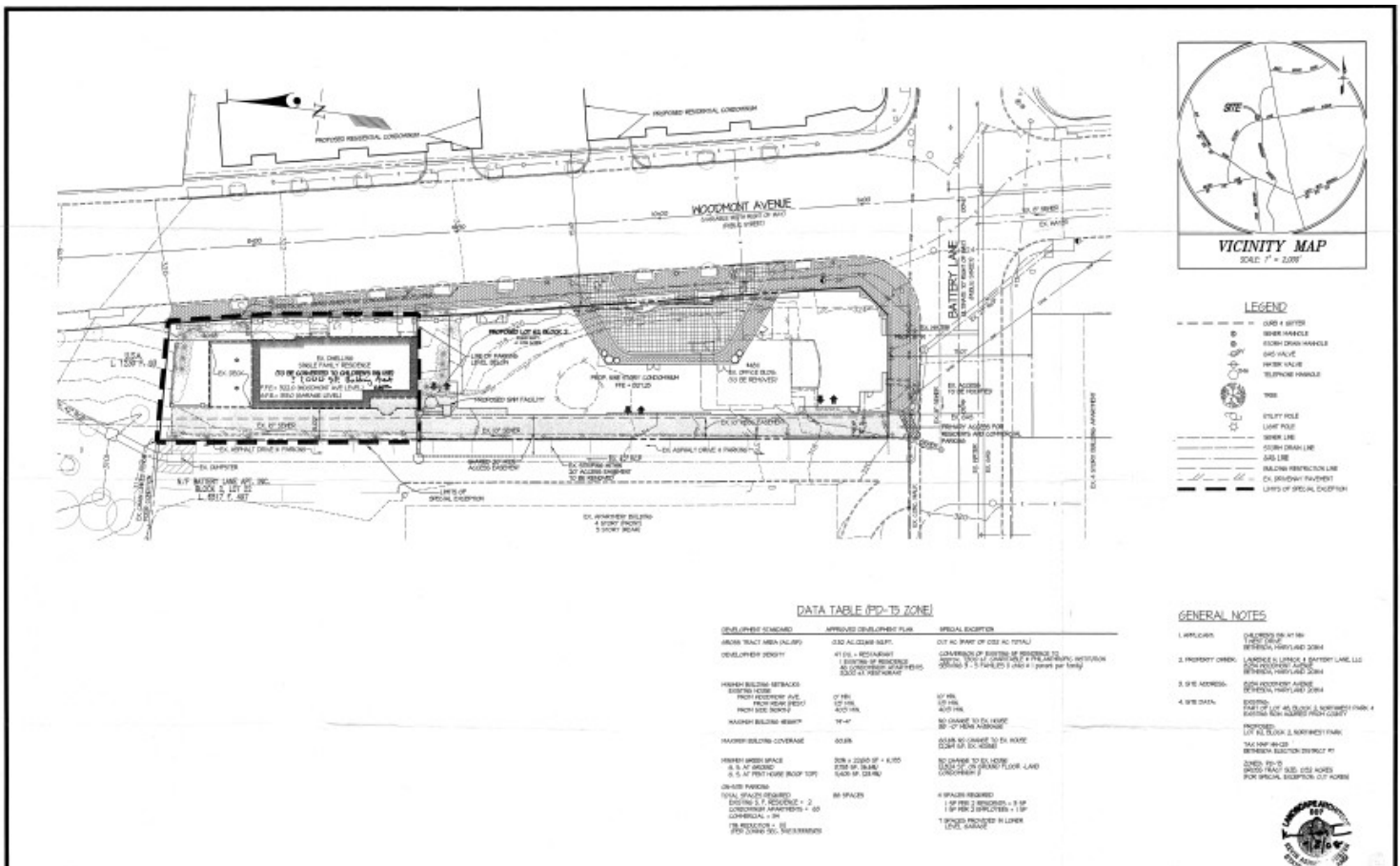
Woodmont House is expected to operate along a similar model to that of the Children's Inn. The house has seven bedroom, five bathrooms and large common spaces. It is expected to have a common kitchen, a television room, a business center, and an exercise room. See Tr. at 25. The facility is expected to have one staff member on site during the day, one during the evening, and a security guard at night, although this will likely be supplemented with volunteers and potentially additional staff. Woodmont House staff will link residents with individually tailored community partners who will help the family learn to live and care for their child independently, in preparation for returning home. These partners include food banks, career and employment agencies, schools, community centers, religious institutions, embassies, childcare centers, wellness programs and language services. See Ex. 3. Patients at Woodmont House will be transported to the NIH for medical needs by a shuttle bus operated by the NIH or the Children's Inn. The Inn has a contract with the Montgomery County Public Schools to provide schooling to NIH patients, which is supplemented by private tutors, and these services will be available to Woodmont House residents as well.

As explained by the Inn's Chief Executive Officer, Kathy Russell, one of the desires expressed by patients' parents is to play an active part in caring for their child, during a medical crisis that has taken away much of their control over their child's well-being. This has led the Inn, and will lead Woodmont House, to create space for parents to care for their children, such as doing some of

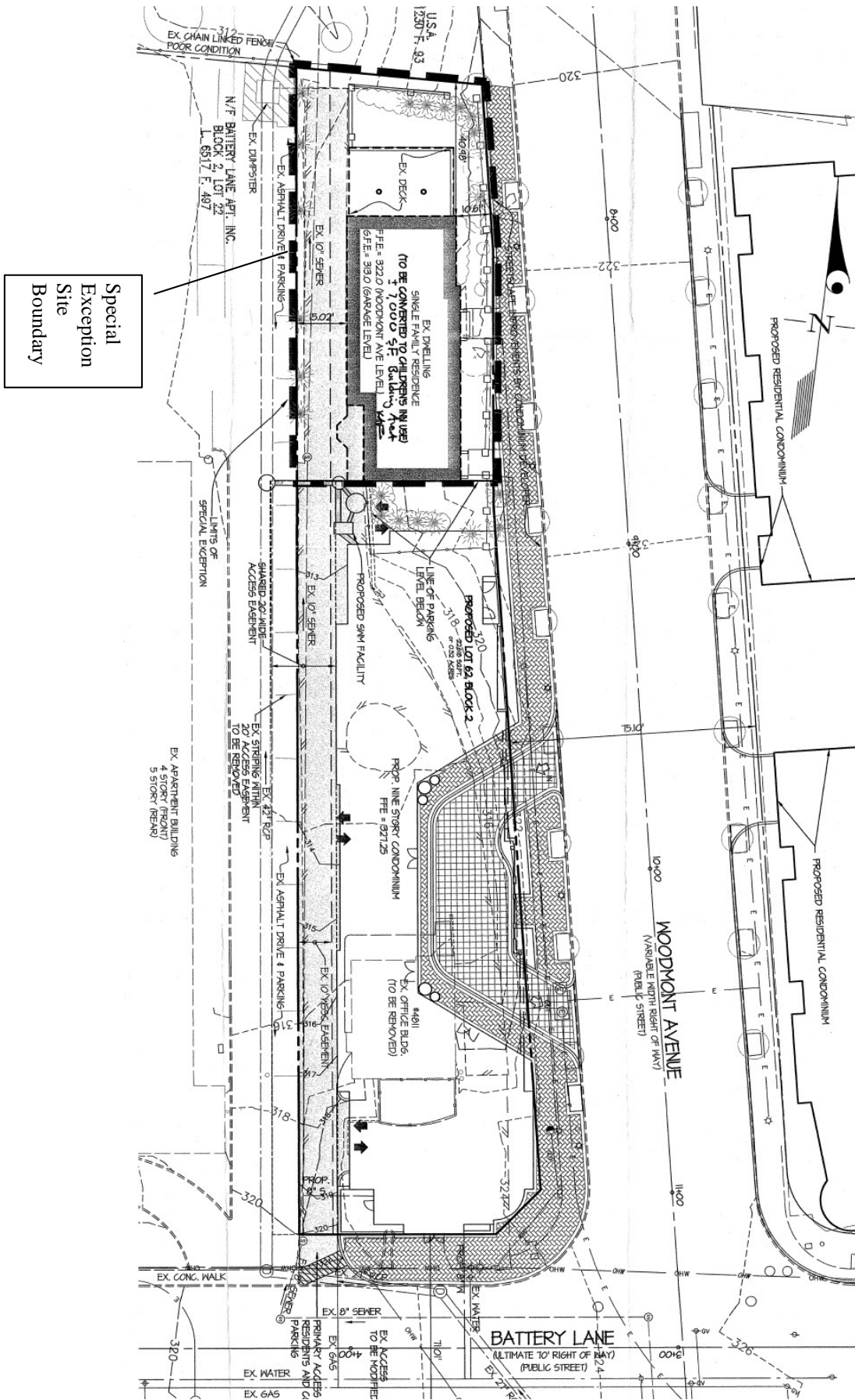
their own housekeeping and making their own meals. Families will have access to grocery runs so they can buy food, and those with financial difficulty buying food will have access to food donations.

Typically, a patient at the Inn or Woodmont House will be accompanied by one parent, while the other parent stays home, to keep generating income and provide a degree of normalcy for siblings. Sometimes other family members may come visit during intense periods or on weekends. Families staying at Woodmont House will rarely have their own cars, since most come from very far away. Vehicular trips to the site will be limited mostly to a small number of staff and volunteers, plus shuttle buses transporting residents. Outdoor activity will be limited to the use of two small patios, both of which are screened from view from the street. The house has seven parking spaces in a ground-level garage, which is expected to amply meet the need. The site plan for the combined property is shown below in full, and at a larger scale on the pages that follow.

### Site Plan, Ex. 4(a)






**Site Plan Graphics, from Ex. 4(a)**



**Site Plan Legend, from Ex. 4(a)**

## LEGEND

=====		CURB & GUTTER
③		SEWER MANHOLE
④		STORM DRAIN MANHOLE
⊖ <sup>GV</sup>		GAS VALVE
⊖		WATER VALVE
○ <sup>TMH</sup>		TELEPHONE MANHOLE
		TREE
		UTILITY POLE
		LIGHT POLE
-----		SEWER LINE
- - - - -		STORM DRAIN LINE
=====		GAS LINE
=====		BUILDING RESTRICTION LINE
== // == // ==		EX. DRIVEWAY PAVEMENT
=====		LIMITS OF SPECIAL EXCEPTION

### Site Plan Data Table, from Ex. 4(a)

DATA TABLE (PD-75 ZONE)

DEVELOPMENT STANDARD	APPROVED DEVELOPMENT PLAN	SPECIAL EXCEPTION
GROSS TRACT AREA (AC./SF):	0.52 AC./22,618 SQ.FT.	0.17 AC (PART OF 0.52 AC TOTAL)
DEVELOPMENT DENSITY	47 D.U. + RESTAURANT 1 EXISTING SF RESIDENCE 46 CONDOMINIUM APARTMENTS 3,200 s.f. RESTAURANT	CONVERSION OF EXISTING SF RESIDENCE TO Approx. 7,300 s.f. CHARITABLE & PHILANTHROPIC INSTITUTION SERVING 3 - 5 FAMILIES (1 child & 1 parent per family)
MINIMUM BUILDING SETBACKS EXISTING HOUSE FROM WOODMONT AVE. FROM REAR (WEST) FROM SIDE (NORTH)	0' MIN. 11.5' MIN. 40.5' MIN.	10' MIN. 11.5' MIN. 40.5' MIN.
MAXIMUM BUILDING HEIGHT*	7'-4"	NO CHANGE TO EX. HOUSE 38' - 0" MEAN AVERAGE
MAXIMUM BUILDING COVERAGE	60.6%	60.6% NO CHANGE TO EX. HOUSE (2,269 S.F. EX. HOUSE)
MINIMUM GREEN SPACE G. S. AT GROUND G. S. AT PENT HOUSE (ROOF TOP)	30% x 22,618 SF = 6,785 3,753 SF. (16.6%) 5,405 SF. (23.9%)	NO CHANGE TO EX. HOUSE (2,824 S.F. ON GROUND FLOOR -LAND CONDOMINIUM 1)
ON-SITE PARKING		
TOTAL SPACES REQUIRED EXISTING S. F. RESIDENCE = 2 CONDOMINIUM APARTMENTS = 63 COMMERCIAL = 34 17% REDUCTION = (11) (PER ZONING SEC. 59.E.3.333(B)(3))	88 SPACES	4 SPACES REQUIRED 1 SP PER 2 RESIDENTS = 3 SP 1 SP PER 2 EMPLOYEES = 1 SP  7 SPACES PROVIDED IN LOWER LEVEL GARAGE



**Site Plan General Notes, from Ex. 4(a)**GENERAL NOTES

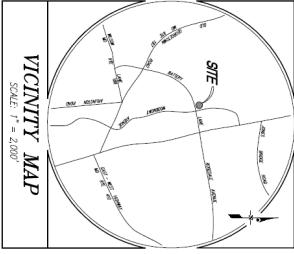
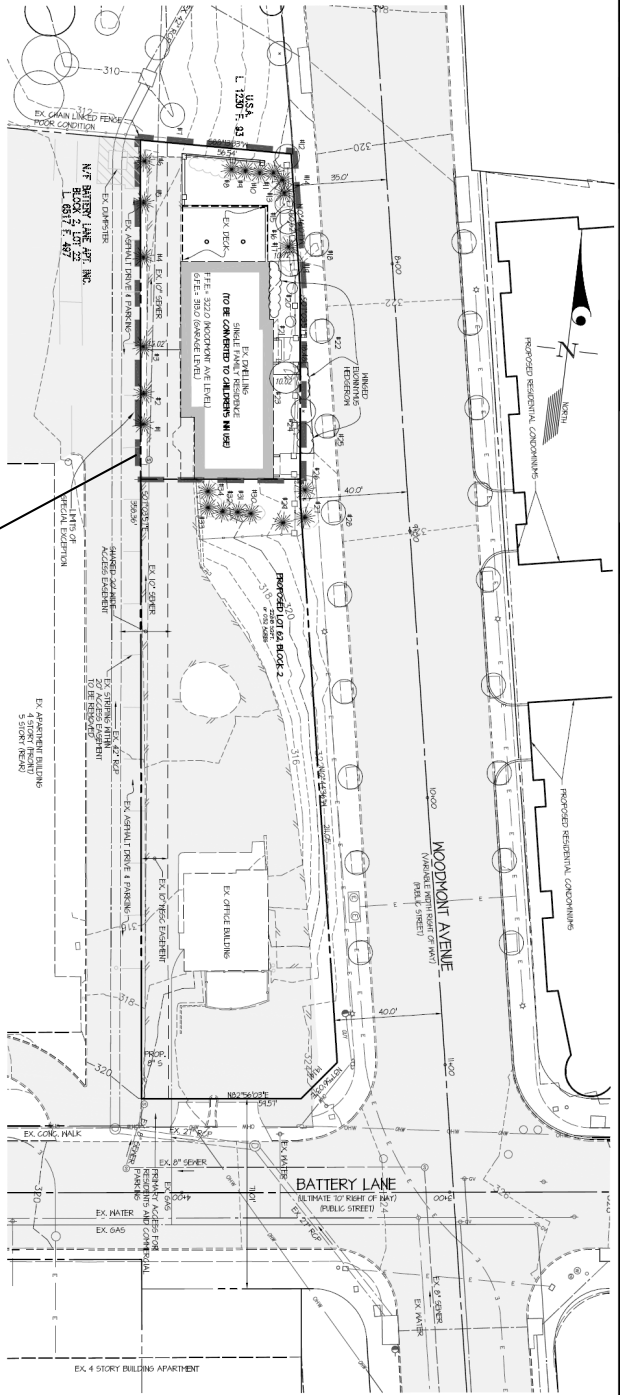
1. APPLICANT: CHILDREN'S INN AT NIH  
7 WEST DRIVE  
BETHESDA, MARYLAND 20814
2. PROPERTY OWNER: LAURENCE H. LIPNICK & BATTERY LANE, LLC  
8234 WOODMONT AVENUE  
BETHESDA, MARYLAND 20814
3. SITE ADDRESS: 8234 WOODMONT AVENUE  
BETHESDA, MARYLAND 20814
4. SITE DATA: EXISTING:  
PART OF LOT 48, BLOCK 2, NORTHWEST PARK &  
EXISTING ROW ACQUIRED FROM COUNTY
- PROPOSED:  
LOT 62, BLOCK 2, NORTHWEST PARK
- TAX MAP HN-123  
BETHESDA ELECTION DISTRICT #1
- ZONED: PD-T5  
GROSS TRACT SIZE: 0.52 ACRES  
(FOR SPECIAL EXCEPTION: 0.17 ACRES)

***D. Landscaping, Lighting, Signage and the Environment***

The subject site is mostly covered with building and pavement. Landscaping consists of evergreens trees and hedges along the north, south and east property lines, as well as some ornamental plantings, all of which are shown on the Existing Conditions plan reproduced below. No changes to the landscaping are proposed. A condition of approval recommended at the close of this report would require the Petitioner to maintain the landscaping shown on the Existing Conditions Plan in good condition. The Existing Conditions plan is shown in full below, and at a larger scale on the pages that follow.

**Existing Conditions Plan, Ex. 4(c)**

Existing Conditions Plan, Ex. 4(c)



- LEGEND
- CASE 1: OTHER
  - CASE 2: OTHER
  - CASE 3: OTHER
  - CASE 4: OTHER
  - CASE 5: OTHER
  - CASE 6: OTHER
  - CASE 7: OTHER
  - CASE 8: OTHER
  - CASE 9: OTHER
  - CASE 10: OTHER
  - CASE 11: OTHER
  - CASE 12: OTHER
  - CASE 13: OTHER
  - CASE 14: OTHER
  - CASE 15: OTHER
  - CASE 16: OTHER
  - CASE 17: OTHER
  - CASE 18: OTHER
  - CASE 19: OTHER
  - CASE 20: OTHER
  - CASE 21: OTHER
  - CASE 22: OTHER
  - CASE 23: OTHER
  - CASE 24: OTHER
  - CASE 25: OTHER
  - CASE 26: OTHER
  - CASE 27: OTHER
  - CASE 28: OTHER
  - CASE 29: OTHER
  - CASE 30: OTHER
  - CASE 31: OTHER
  - CASE 32: OTHER
  - CASE 33: OTHER
  - CASE 34: OTHER
  - CASE 35: OTHER
  - CASE 36: OTHER
  - CASE 37: OTHER
  - CASE 38: OTHER
  - CASE 39: OTHER
  - CASE 40: OTHER
  - CASE 41: OTHER
  - CASE 42: OTHER
  - CASE 43: OTHER
  - CASE 44: OTHER
  - CASE 45: OTHER
  - CASE 46: OTHER
  - CASE 47: OTHER
  - CASE 48: OTHER
  - CASE 49: OTHER
  - CASE 50: OTHER
  - CASE 51: OTHER
  - CASE 52: OTHER
  - CASE 53: OTHER
  - CASE 54: OTHER
  - CASE 55: OTHER
  - CASE 56: OTHER
  - CASE 57: OTHER
  - CASE 58: OTHER
  - CASE 59: OTHER
  - CASE 60: OTHER
  - CASE 61: OTHER
  - CASE 62: OTHER
  - CASE 63: OTHER
  - CASE 64: OTHER
  - CASE 65: OTHER
  - CASE 66: OTHER
  - CASE 67: OTHER
  - CASE 68: OTHER
  - CASE 69: OTHER
  - CASE 70: OTHER
  - CASE 71: OTHER
  - CASE 72: OTHER
  - CASE 73: OTHER
  - CASE 74: OTHER
  - CASE 75: OTHER
  - CASE 76: OTHER
  - CASE 77: OTHER
  - CASE 78: OTHER
  - CASE 79: OTHER
  - CASE 80: OTHER
  - CASE 81: OTHER
  - CASE 82: OTHER
  - CASE 83: OTHER
  - CASE 84: OTHER
  - CASE 85: OTHER
  - CASE 86: OTHER
  - CASE 87: OTHER
  - CASE 88: OTHER
  - CASE 89: OTHER
  - CASE 90: OTHER
  - CASE 91: OTHER
  - CASE 92: OTHER
  - CASE 93: OTHER
  - CASE 94: OTHER
  - CASE 95: OTHER
  - CASE 96: OTHER
  - CASE 97: OTHER
  - CASE 98: OTHER
  - CASE 99: OTHER
  - CASE 100: OTHER

TABLE 1: SITE LIST

NO.	CONTRIBUTOR NAME	LAND USE	PERMIT	CONDITION
1	LETING CHURCH	X: Agricultural	427 H	good
2	LETING CHURCH	X: Agricultural	427 H	good
3	LETING CHURCH	X: Agricultural	427 H	good
4	LETING CHURCH	X: Agricultural	427 H	good
5	LETING CHURCH	X: Agricultural	427 H	good
6	LETING CHURCH	X: Agricultural	427 H	good
7	LETING CHURCH	X: Agricultural	427 H	good
8	LETING CHURCH	X: Agricultural	427 H	good
9	LETING CHURCH	X: Agricultural	427 H	good
10	LETING CHURCH	X: Agricultural	427 H	good
11	LETING CHURCH	X: Agricultural	427 H	good
12	LETING CHURCH	X: Agricultural	427 H	good
13	LETING CHURCH	X: Agricultural	427 H	good
14	LETING CHURCH	X: Agricultural	427 H	good
15	LETING CHURCH	X: Agricultural	427 H	good
16	LETING CHURCH	X: Agricultural	427 H	good
17	LETING CHURCH	X: Agricultural	427 H	good
18	LETING CHURCH	X: Agricultural	427 H	good
19	LETING CHURCH	X: Agricultural	427 H	good
20	LETING CHURCH	X: Agricultural	427 H	good
21	LETING CHURCH	X: Agricultural	427 H	good
22	LETING CHURCH	X: Agricultural	427 H	good
23	LETING CHURCH	X: Agricultural	427 H	good
24	LETING CHURCH	X: Agricultural	427 H	good
25	LETING CHURCH	X: Agricultural	427 H	good
26	LETING CHURCH	X: Agricultural	427 H	good
27	LETING CHURCH	X: Agricultural	427 H	good
28	LETING CHURCH	X: Agricultural	427 H	good
29	LETING CHURCH	X: Agricultural	427 H	good
30	LETING CHURCH	X: Agricultural	427 H	good
31	LETING CHURCH	X: Agricultural	427 H	good
32	LETING CHURCH	X: Agricultural	427 H	good
33	LETING CHURCH	X: Agricultural	427 H	good
34	LETING CHURCH	X: Agricultural	427 H	good

Special  
Exception  
Site  
Boundary

GLW/GUTHRIE, LITTLE & WEBER, P.A.

ONE DORCHESTER LANE, SUITE 200, DORCHESTER, MASSACHUSETTS 01918-1000  
TEL: 508-261-1100 FAX: 508-261-1101  
WWW.GLW-GUTHRIE.COM

PREPARED FOR:

THE CHILDREN'S INN AT NIH  
7 West Drive  
Bethesda, MD 20814  
Attn: Kathy Bessell  
Ph: 301-766-5272

EXISTING CONDITIONS PLAN

WOODMONT HOUSE  
THE CHILDREN'S INN AT NIH  
NORTHWEST PARK  
PROPOSED LOT 62, BLOCK 2

SCALE: 1" = 20'

DATE: 10/14/2008

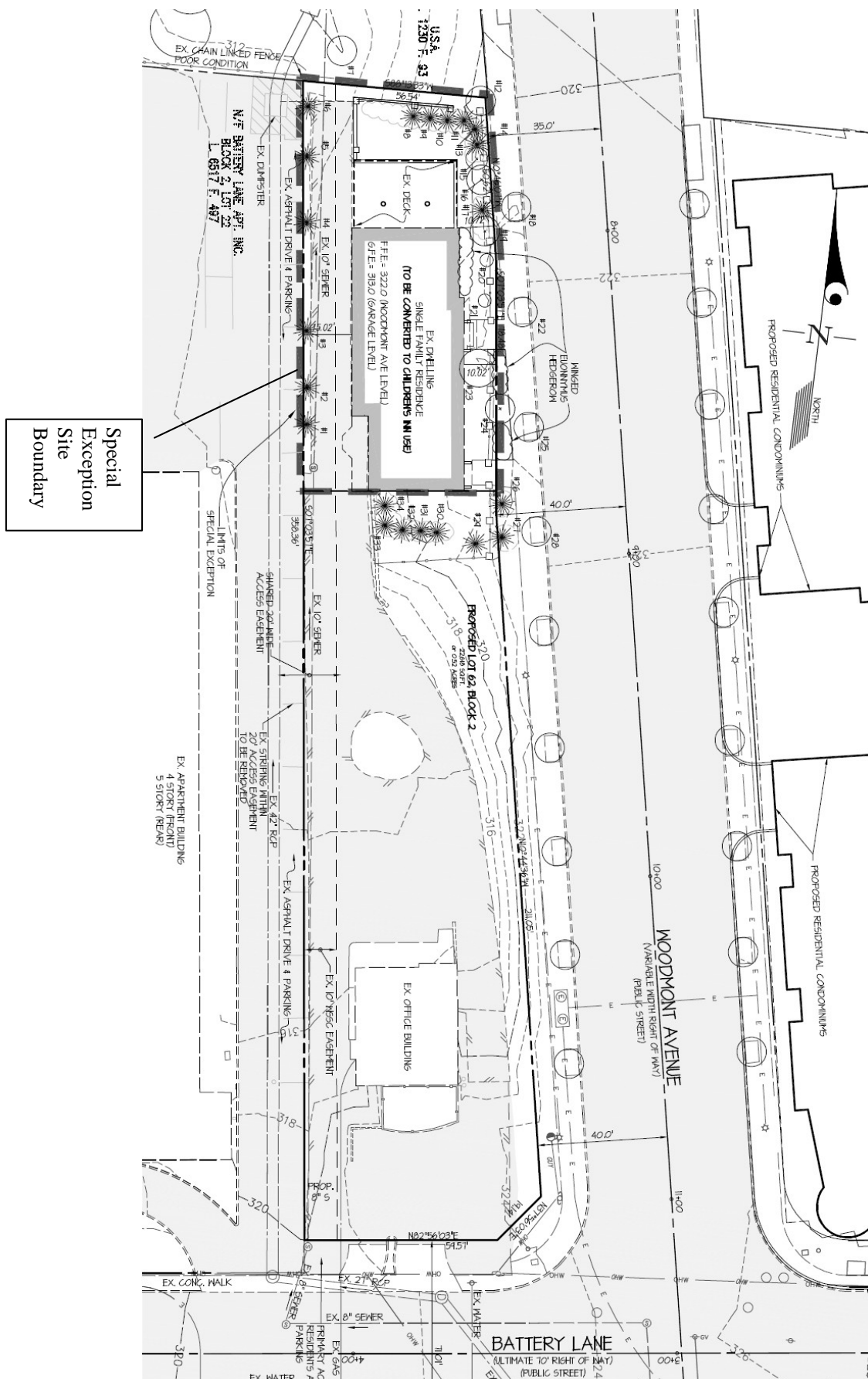
SHEET: 1 OF 1

SCALE: 1" = 200'

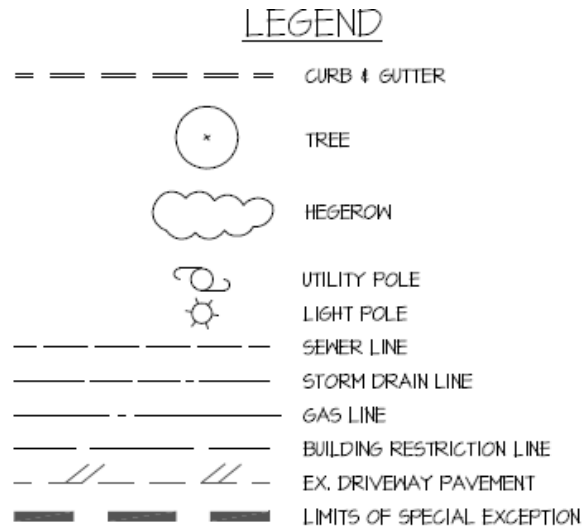
DATE: 10/14/2008

SHEET: 1 OF 1

**Existing Conditions Graphics, from Ex. 4(c)**



## Existing Conditions Plan Legend, from Ex. 4(c)



## Existing Conditions Plan Tree List, from Ex. 4(c)

No.	COMMON NAME	LATIN NAME	DBH/HT.	CONDITION
1	LEYLAND CYPRESS	X <i>Cyressocyparis leylandii</i>	±10' ht	good
2	LEYLAND CYPRESS	X <i>Cyressocyparis leylandii</i>	±10' ht	good
3	LEYLAND CYPRESS	X <i>Cyressocyparis leylandii</i>	±10' ht	good
4	LEYLAND CYPRESS	X <i>Cyressocyparis leylandii</i>	±10' ht	good
5	LEYLAND CYPRESS	X <i>Cyressocyparis leylandii</i>	±10' ht	good
6	LEYLAND CYPRESS	X <i>Cyressocyparis leylandii</i>	±10' ht	good
7	SYCAMORE	<i>Platanus occidentalis</i>	9.5'	good
8	LEYLAND CYPRESS	X <i>Cyressocyparis leylandii</i>	±10' ht	good
9	LEYLAND CYPRESS	X <i>Cyressocyparis leylandii</i>	±10' ht	good
10	LEYLAND CYPRESS	X <i>Cyressocyparis leylandii</i>	±10' ht	good
11	LEYLAND CYPRESS	X <i>Cyressocyparis leylandii</i>	±10' ht	good
12	JAPANESE ZELKOVA	<i>Zelkova serrata</i>	14.5'	good
13	LEYLAND CYPRESS	X <i>Cyressocyparis leylandii</i>	±10' ht	good
14	LEYLAND CYPRESS	X <i>Cyressocyparis leylandii</i>	±10' ht	good
15	BRADFORD PEAR	<i>Pyrus calleryana</i>	7.5"	good
16	MAGNOLIA	<i>Magnolia</i> ssp.	multi-stem	good
17	LEYLAND CYPRESS	X <i>Cyressocyparis leylandii</i>	±10' ht	good
18	JAPANESE ZELKOVA	<i>Zelkova serrata</i>	10.5"	good
19	BRADFORD PEAR	<i>Pyrus calleryana</i>	multi-stem	good
20	GRAPE MYRTLE	<i>Lagerstroemia indica</i>	8.5'	good
21	GRAPE MYRTLE	<i>Lagerstroemia indica</i>	8.5'	good
22	JAPANESE ZELKOVA	<i>Zelkova serrata</i>	8.5'	good
23	BRADFORD PEAR	<i>Pyrus calleryana</i>	10.5"	fair- insect, fungus & limb damage
24	EASTERN REDBUD	<i>Cercis canadensis</i>	2.5'	good
25	JAPANESE ZELKOVA	<i>Zelkova serrata</i>	9.5"	good
26	LEYLAND CYPRESS	X <i>Cyressocyparis leylandii</i>	±10' ht	good
27	LEYLAND CYPRESS	X <i>Cyressocyparis leylandii</i>	±10' ht	good
28	JAPANESE ZELKOVA	<i>Zelkova serrata</i>	11"	good
29	LEYLAND CYPRESS	X <i>Cyressocyparis leylandii</i>	±10' ht	good
30	LEYLAND CYPRESS	X <i>Cyressocyparis leylandii</i>	±15' ht	good
31	LEYLAND CYPRESS	X <i>Cyressocyparis leylandii</i>	±15' ht	good
32	LEYLAND CYPRESS	X <i>Cyressocyparis leylandii</i>	±15' ht	good
33	LEYLAND CYPRESS	X <i>Cyressocyparis leylandii</i>	±15' ht	good
34	LEYLAND CYPRESS	X <i>Cyressocyparis leylandii</i>	±15' ht	good

The special exception site contains no natural or environmental features of note, and is not located within a Special Protection Area or a Primary Management Area. The combined property was found exempt from forest conservation requirements in January 2002 due to its small size, the absence of any forest on site and the fact that no specimen or champion trees would be disturbed. See Ex. 5. Technical Staff has stated, in an email to Petitioner's land planner, that a forest conservation exemption does not expire as long as the limits of disturbance and property size supporting the exemption remain unchanged. See *id.* Environmental Planning Staff at the MNCPPC concluded that the proposed special exception would not create any objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity. See Staff Report at 12.

No signage is proposed for Woodmont House. No changes are planned to exterior lighting, which consists of residential-type fixtures at the doors and along the side patio.

### ***E. Traffic***

The special exception site abuts Battery Lane, a business district street with a 70-foot right-of-way, and Woodmont Avenue, at that location an arterial roadway with a recommended right-of-way of 80 feet and an actual right-of-way of 75 feet. See Staff Report at 10. Transportation Planning Staff at MNCPPC has determined that based on the Planning Board's Local Area Transportation Review ("LATR") Guidelines, the proposed use does not require a traffic study, because it would generate fewer than 30 trips during the morning and evening peak hours. Accordingly, the use would satisfy LATR requirements. See Transportation Planning Staff Report at 11. This conclusion was based on Petitioner's Transportation Statement, which stated that the residence would be occupied by three to five families who will not have use of personal vehicles during their stay, and therefore will not generate vehicular trips during the morning and evening peak hours. See *id.* The Transportation Statement also noted that there would be one staff person on site at a time, generating a single vehicular trip during each of the morning and evening peak hours. This, Transportation Planning Staff found, is equivalent to the number of vehicular peak-hour trips generated by a single-family detached house during the peak hours.

The evidence indicates that vehicular trips may be slightly higher than Transportation Staff anticipated, if one takes into account a possible second staff member, volunteers, cleaning crews and shuttle trips. Nothing in the record suggests, however, that a significant number of trips would occur during the morning and evening peak hours (the 60-minute period between 6:30 and 9:30 a.m. and between 4:00 and 7:00 p.m. when traffic on the adjacent street is at its peak). The description of the proposed operation supports more readily an expectation that trips to and from the site would happen at varying times of day. The Planning Board recommended as a condition of approval that the special exception be limited to the land use and operation described in Petitioner's Transportation Statement, which took into account only trips by staff members, one arriving during the morning peak period and one during the evening peak period. See Ex. 7. Based on the hearing testimony, this condition could limit the successful operation of Woodmont House by restricting trips other than staff to times outside the three-hour peak periods. This could make it difficult, for example, to get patients to and from medical appointments and to schedule volunteers. To reconcile the condition recommended by the Planning Board and Transportation Staff with the needs of the proposed special exception, the Hearing Examiner recommends a condition that would limit the special exception to one staff member trip during each of the morning and evening peak periods, and no more than four additional trips during each of the three-hour peak periods. Based on the hearing testimony, this should allow sufficient flexibility to accommodate the needs of the residents, without generating significantly more peak-hour trips than Transportation Staff and the Planning Board took into account in their recommendations.

Transportation Planning Staff found that the proposed special exception would not be required to perform any mitigation under Policy Area Mobility Review, because it would generate three or fewer trips during each of the morning and evening peak hours. See Staff Report at 11. This finding was based on trips anticipated during the peak *hour*, not the three-hour peak period. Accordingly, the Hearing Examiner considers the recommended conditions, which would allow a total of five trips during each of the three-hour peak periods, to be consistent with this finding.

### ***F. Community Support***

The record contains letters in support of the proposed special exception from Members of Congress Constance A. Morella and Chris Van Hollen; Deborah I. Dingell, wife of Member of Congress John Dingell and Executive Vice Chair of the Children's Inn Board of Directors; the Huntington Parkway Citizens Association (representing 75 homeowners in a community a few blocks northwest of the subject site); the Western Montgomery County Citizens Advisory Board; the Glenbrook Village Homeowners Association (a group of 39 townhouses bordering Wisconsin Avenue and Jones Bridge Road); the Greater Bethesda-Chevy Chase Chamber of Commerce; the Bethesda-Chevy Chase YMCA; Suburban Hospital and political analyst Cokie Roberts, a member of the Board of Directors of the Children's Inn. See Exs. 19-26, 28 and 34. The letters all convey appreciation for the mission of the Children's Inn and unqualified support for extending that mission as proposed in this case. They also argue that the proposed special exception would have no adverse effects on the community. The Huntington Parkway Citizen's Association supports the application because it would use an existing structure with no external changes, it would be consistent with the Bethesda CBD Sector Plan, the maximum occupancy of five families would have no adverse impacts on the neighbors, and the use would not impede traffic on Woodmont Avenue because shuttle bus pick-ups and drop-offs would take place on the driveway at the rear of the property. See Ex. 21.

Ms. Russell testified that the Children's Inn held a community meeting to present the proposed Woodmont House, and received only supportive feedback. See Tr. at \_\_\_\_.

## **III. SUMMARY OF HEARING**

### ***A. Petitioner's Case in Chief***

#### **1. Kathy Lee Russell, Children's Inn CEO**

Kathy Lee Russell, Chief Executive Office of the Children's Inn, testified on behalf of the applicant. Her training is in hospital administration, and she has spent the majority of her career in the field of cancer research and support to cancer patients. Ms. Russell was a founding board member of

the Children's Inn at its inception almost 20 years ago, and has been its CEO for four years. In that capacity, she is responsible for day-to-day leadership and management of the 59-room existing facility.

Ms. Russell explained that there is a private/public relationship between the Children's Inn, a private, tax-exempt corporation, and the NIH, a federal government entity. She stated that the Children's Inn provides charitable and benevolent services to augment the research mission of the NIH. Ms. Russell described the founding of the Children's Inn, which was the brainchild of the director of clinical services for pediatrics at the National Cancer Institute in the 1980s, who identified the need for a residence that would provide psycho-social support and lodging for the families of children being treated at NIH for pediatric diseases. Up until that time, families were staying in hotels along the Wisconsin Avenue corridor, which Ms. Russell described as a less than ideal way to support a sick child. She noted that the original Children's Inn building opened in June 1990, and an addition was put on in May 2004.

Ms. Russell stated that the Children's Inn serves children living outside the Washington, D.C. area who are being treated at the NIH for a life-threatening illness such as cancer, a blood disorder or a genetic disease. The Inn's purpose, as described by Ms. Russell, is to humanize the process, create some sense of normalcy and provide psycho-social support, including free shelter, food and clothing, to sustain the family during this medical crisis. She described it as a partnership between clinicians, who are providing care and striving to improve the quality of life for this child and children with similar diseases down the road, and the Inn trying to provide support for that particular family and its individual crisis at that time.

Ms. Russell described how the Inn operates, noting that its magic is the common spaces, where families come together, cook for their children, share common experiences and draw emotional and psychological support from each other.

Ms. Russell stated that establishing a length-of-stay policy is always a challenge at the Inn. The NIH's biomedical mission is to find answers to questions about pediatric disease and develop new therapies, which requires that patients participate in studies on an ongoing basis. With increases



in knowledge of the human genome and other biomedical advances, they have found that some families have to stay in the area for long periods of time. Ms. Russell noted that the Inn is constantly in a position where the need outstrips the capacity, so over the last two years they have been forced to go into a triage system that imposes a cap of 120 days on the length of stay for each family. She stated that this is not an absolute rule, and there are exceptions.

The Inn is located on the NIH campus, a quarter of a block from the hospital, so patients and families often get to the Inn by walking. The Inn also provides a shuttle service between the Inn, the hospital and the Metro for airport access. Ms. Russell observed that families staying at the Inn rarely have their own cars, since they often come from very far away.

The Inn's capacity problems led the organization to look for an additional facility in the community. They identified the subject property, which is located adjacent to the NIH campus and is ideally suited to the Inn's purpose, with seven bedrooms, five bathrooms and large communal spaces for family-to-family support. The Inn hopes to use the new facility, dubbed Woodmont House, as transitional housing for families who cannot leave the Bethesda area for medical reasons, but who can't afford to live in the area until they are ready to go home. Ms. Russell envisions three to five families living at Woodmont House at a time, usually consisting of one child and one parent. The facilities would be run very much like the Inn, with parents responsible for cooking their own meals and doing some of the housekeeping, shuttle services for transportation, one staff member on site, volunteers providing tutoring for the children, and perhaps volunteers to help families identify resources for their basic living needs. The intent is to limit the length of stay at Woodmont House to six months, but families may stay longer, depending on the clinical needs.

Ms. Russell noted that while the intent is to have one staff member on site at a time, it is possible that there could be two there at the same time on some occasions, as well as one or more volunteers.

Ms. Russell testified that Woodmont House would have an exercise room, a business center and locked storage spaces for families, and the Children's Inn chaplain would be available to

families at Woodmont House, as well. She anticipates that families at Woodmont House would be invited to some of the Sunday suppers or common support services at the Inn, while at the same time striving for a sense of transition, independence and return to one's own community.

Ms. Russell stated that the Inn has enjoyed a wonderful relationship with the Bethesda community for the last 20 years, including the Board of Directors, which is made up of community members, and 275 volunteers (10 to 12 per day), many of whom live in the communities immediately adjacent to the Inn. She noted that the Inn conducted community outreach for the proposed Woodmont House, including a community meeting before the special exception application was filed. The response was enthusiastic, which no concerns raised about the proposal. Ms. Russell is not aware of any opposition.

Ms. Russell testified that the Petitioner agrees to be bound by the two conditions recommended by the Planning Board: that the operations be limited as described in the transportation statement, and that bicycles, a pump, tubes, a lock and helmets be maintained on site for residents' use.

With regard to potential school impacts, Ms. Russell stated that the NIH has a contract with Montgomery County Public Schools to provide a school in the hospital for children receiving treatment at the NIH. She noted that the Children's Inn supplements those services with tutoring and a learning program for siblings where necessary. She suggested that the number of children who might be in a position to attend a public school during their stay at the Inn would be very, very small and only for a limited duration.

2. Kevin A. Foster, land planner and landscape architect.

Mr. Foster was designated an expert in land planning and landscape architecture. He stated that a charitable or philanthropic organization is a permitted special exception in the PD-75 Zone, and opined that the use proposed here would be consistent with the Master Plan and with other uses in the area, and appropriate for a site adjacent to the NIH. Mr. Foster testified that converting the existing single-family home on the site to a higher-density, multi-family use would be consistent with the Sector

Plan's visions and recommended densities. He noted that the Sector Plan envisions the Woodmont Triangle Study Area as a vibrant, urban mixed-use neighborhood, and establishes an increase in the supply of housing as one of its goals. Mr. Foster observed that the proposed special exception would create additional housing opportunities of a type that currently does not exist in the community. He further observed that the existing structure supports the Sector Plans' recommendation for a step-down in building heights from the Metro to the edges of the CBD, because the property is on the northeastern edge of the CBD and the three-story structure is clearly lower in height than buildings closer to Metro.

Mr. Foster opined that the proposed special exception would be in harmony with the general character of the existing neighborhood and the future condominium building that is proposed for the southern part of the property. He noted that the existing house was designed to be architecturally compatible with the proposed condominium building, and no exterior changes are proposed. Mr. Foster described the intensity of activity and traffic as negligible. He opined that the existing house is compatible with the surrounding neighborhood and that the proposed use would satisfy all of the general conditions for a special exception. In his view, the proposed special exception would have no greater impact on the community than the single-family use that exists today. He noted that all of the daily family activities would occur either indoors or behind screen walls or fences that block the view of the small outdoor patios from the street, and all of the parking and trash containers would be enclosed in the lower level garage.

Mr. Foster identified one current special exception in the area, the Springhouse Assisted Living Facility, which is just west of the subject property on Battery Lane, and opined that the special exception proposed in this case "would not really increase the number, intensity or scope of the approved special exceptions in the area other than the one" assisted living facility. See Tr. at 39. In Mr. Foster's view, the proposed special exception would not alter the residential nature of the area. He opined that the proposed use would significantly enhance the community by increasing available housing and providing an important charitable and benevolent community service for critically ill children and families.

Mr. Foster opined that the proposed use would be adequately served by public services and facilities, including public water and sewer and nearby police and fire services. He noted that the use would have no impact on the school system and no adverse effects on the public road system.

Mr. Foster noted that the subdivision and site plan applications pending for the combined property do not propose any changes to the single-family house.

Turning to parking, Mr. Foster opined that the Zoning Ordinance requirement, one parking space for every two residents and one for every two employees on the largest work shift, is satisfied. He maintained that the use would require three spaces for the five residents, and one for the employees, for a total of four required spaces. In his view, only adult residents should be counted in calculating the residential parking requirement. See *id.* at 48.

Mr. Foster opined that the proposed special exception would satisfy the inherent/non-inherent standard of evaluation in the Zoning Ordinance. He noted that the existing single-family house is part of the existing residential fabric of Battery Lane, and is of a size and scale that is compatible with the existing neighborhood. He stated that the scope of the operation, including the modest number of families to be served, the limit of two employees at one time and the limited number of visitors anticipated, would be compatible with surrounding properties. He noted that exterior lighting is minimal and would not change, and the number of peak hour vehicle trips is expected to be no greater than the existing single-family home would generate. Mr. Foster opined that the proposed use would have no non-inherent adverse effects.

Mr. Foster testified that the proposed use would be consistent with the design standards of the Development Plan that the County Council last approved for the site, given that the existing single-family house appears on that plan in its current form.

In response to questioning by the People's Counsel, Mr. Foster stated that the building proposed for the site across Woodmont Avenue from the subject property is planned to be nine stories tall. He noted that the site has been cleared, but the construction is on hold. Mr. Foster also noted that no signage is proposed in connection with the Woodmont House special exception.

In response to questions from the Hearing Examiner, Mr. Foster estimated the size of the existing house at approximately 7,000 square feet, and wrote that estimate onto the site plan.

The Petitioner's attorney accepted on behalf of the Petitioner the Hearing Examiner's suggestion to recommend as a condition of approval that the landscaping shown on the existing conditions plan be maintained; the record does not include a specific landscaping plan, and the site landscaping is hard to see on the site plan. Mr. Foster described the lighting as residential-type fixtures at the doors and along the side patio.

Mr. Foster stated that the recommendation in the Transportation Planning Staff memorandum for an additional five-foot dedication along Woodmont Avenue is based on a desire to obtain the full right-of-way called for in the Sector Plan, even though the road itself has already been built to its maximum width. See Transportation Staff Memorandum dated December 22, 2008, attached to Staff Report. He described this as an issue to be addressed in the pending subdivision application, and the Hearing Examiner agrees, noting that the Planning Board did not include this among its recommended conditions of approval.

Mr. Foster agreed that, as explained in an email from Transportation Staff, the recommendation from Technical Staff to improve pedestrian and bicycle connections to NIH through the subject site at the time of site plan review is no longer practical, because NIH is now a fenced site. See Tr. at 65-66; Ex. 32; Staff Report at 8

Finally, Mr. Foster reviewed a series of site and neighborhood photographs in the record. See Exs.(a) – (j). He explained that the existing house is painted in two different shades to make it look like the townhouses that were originally planned for the southern part of the site, but inside it is all one structure. Similarly, the garage has two entrances, but it is all one garage. He noted that improvements are planned for the parking area adjacent to the subject site, as part of the pending site plan application, which would move the parking closer to the curb and create a shared access aisle in the middle of the space, rather than having two access aisles with parking in the middle.

### ***C. People's Counsel***

Martin Klauber, People's Counsel for Montgomery County, participated in questioning during the hearing and delivered a closing statement. Mr. Klauber stated that in more than 30 years working for local government in land use, he has never seen a case that is more in the public interest.

## **IV. CONCLUSIONS**

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. Pre-set legislative standards are both specific and general. The special exception is also evaluated in a site-specific context because there may be locations where it is not appropriate. Weighing all the testimony and evidence of record under a "preponderance of the evidence" standard (see Code §59-G-1.21(a)), the Hearing Examiner concludes that the proposed special exception, with the conditions recommended at the end of this report, would satisfy all of the specific and general requirements for the use.

### ***A. Standard for Evaluation***

The standard for evaluation prescribed in Code § 59-G-1.21 requires consideration of the inherent and non-inherent adverse effects of the proposed use, at the proposed location, on nearby properties and the general neighborhood. Inherent adverse effects are "the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations." Code § 59-G-1.21. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are "physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site." *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational

characteristics are necessarily associated with a charitable or philanthropic institution. Characteristics of the proposed use that are consistent with the characteristics thus identified will be considered inherent adverse effects. Physical and operational characteristics of the proposed use that are not consistent with the characteristics thus identified, or adverse effects created by unusual site conditions, will be considered non-inherent adverse effects. The inherent and non-inherent effects thus identified must be analyzed, in the context of the subject property and the general neighborhood, to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff identified the following as inherent characteristics of a charitable or philanthropic institution: buildings, employees, associated parking and driveways, exterior lighting, vehicular trips to and from the site by residents and employees, deliveries and trash pick-ups. See Staff Report at 14. In the Hearing Examiner's view, most charitable or philanthropic institutions do not have a residential component and, operating on a limited budget, are unlikely to have more than one building or a need for extensive outdoor lighting. Accordingly, the Hearing Examiner would amend Staff's list of inherent characteristics to include a single building, exterior lighting sufficient to provide for safe on-site circulation, and vehicular trips generated by employees, visitors, volunteers or members of the organization, delivery vehicles and trash vehicles.

In the present case, most characteristics of the proposed special exception are inherent in the use: the building, parking, driveway access, exterior lighting and minimal vehicular activities. The nature of the proposed use as a residential facility must be considered a non-inherent characteristic, because most charitable or philanthropic institutions are not residential in nature. No unusual site conditions exist that should be considered non-inherent adverse effects.

The proposed use would be compatible with existing structures and uses in the general neighborhood. The special exception site, proposed for a multi-family residential use, is adjacent to an existing multi-family building to the west, and proposed multi-family buildings to the south and east. The use would re-use a single-family structure that is part of the existing residential fabric of the area. The level of activity on site would be modest, limited to the comings and goings of five small families

whose activities are limited by critical illness, as well small numbers of staff and volunteers supporting those families. Outdoor activity would be limited to use of the small patios, which is unlikely to have a noticeable adverse effect. All parking and trash service would take place within the ground-floor garage. Vehicular trips would be very limited in number, with no adverse impact on area roadways. Based on the preponderance of the evidence, the Hearing Examiner concludes that the inherent and non-inherent adverse effects of the proposed special exception do not warrant denial.

### ***B. Specific Standards***

The specific standards for a charitable or philanthropic institution are found in §59-G-2.21. The Technical Staff report and Petitioner's written evidence and testimony provide sufficient evidence to support a conclusion that, with the recommended conditions of approval, the proposed facility would be consistent with these specific standards, as outlined below.

#### **Sec. 59-G-2.21. Charitable or philanthropic institution.**

- (a) **Development standard.** A special exception may be granted for a charitable or philanthropic institution, subject to the following requirements:
  - (1) In the Agricultural Zones . . . .
  - (2) In the One-Family Residential Zones . . . .
  - (3) In the C-1 and C-3 Zones . . . .

Conclusion: None of the development standards listed in subparagraph (a) apply to the present case. The special exception site (as well as the rest of the combined property) is located in the PD Zone, which is not included in any of the groupings described in subparagraph (a). Under the plain language of the section, none of the listed development standards apply to a property in the PD Zone. Moreover, the need for development standards is mitigated in the case of the PD Zone, which by its own terms requires that any special exception comply with the design standards of the approved Development Plan for the site. No property may be rezoned to the PD Zone unless the County Council, sitting as District Council, approves a Development Plan at the time of the rezoning. The Development Plan must demonstrate a compatible relationship between the proposed development and its



surroundings, consistent with the extensive purpose clause for the PD Zone. Thus, additional standards under the special exception would be largely superfluous.

(b) **Parking Standard.**

(1) Off-street parking must be provided as follows:

- (i) Residential: one parking space for every 2 residents, and one space for every 2 employees on the largest work shift.

Conclusion: Both Technical Staff and Petitioner's land planner found that the proposed use would require four parking spaces, three for the five families and one for the single employee per work shift. See Staff Report at 15; Tr. at \_\_\_\_\_. This is based on interpreting the "one parking space for every two residents" to mean one space for every two adult residents, a logical interpretation given that children cannot drive. Even if the requirement were interpreted to require one space for every two residents including children, the seven parking spaces available in the on-site garage would still be adequate: assuming a maximum of ten residents at one time (two per family), the use would require five spaces for residents and one for the single employee per work shift, leaving an extra space for a second employee time to time or for volunteers. Moreover, the evidence is undisputed that few resident families, if any, will have vehicles to park on the site, so the actual parking need will be amply served by seven parking spaces for one or maybe two employees per shift, plus small numbers of volunteers and delivery vehicles.

- (ii) Recreational and Environmental: the total number of required parking spaces for each component of the proposed development under Section E-3.7 for auditorium, health club, commercial swimming pool, commercial recreational establishment, and other similar uses.

*Not applicable.*

- (iii) Office: same as general office under Section E-3.7.

*Not applicable.*

- (2) The Board may modify the off-street parking space requirements if warranted because of the program, method of operation, or clientele.

Conclusion: No modification is necessary or requested.

- (3) All other parking design standards must comply with Section E-2.83 and other applicable sections of Article 59-E.

Conclusion: All parking is provided within a garage, so none of the surface parking facility-standards in Article 59-E apply.

(c) Waiver.

- (1) If the property is designated as a historic resource by the master plan for historic preservation, the Board may waive development standards (a)(1)(i) through (ix) and (a)(2)(i) through (viii).
- (2) If the special exception is for a new building to be located on the property of an existing religious institution, the Board may waive the standards (a)(1)(ix) and (a)(2)(vi).
- (3) The Board must not grant any waiver as stated in Sections (c)(1) and (2) unless it finds that:
  - (i) Road access will be safe and adequate for the anticipated traffic to be generated;
  - (ii) Road access will not have a significantly adverse impact on the surrounding neighborhood; and
  - (iii) The grant of the waiver will not cause other significant adverse impacts on the surrounding neighborhood.
- (4) In the agricultural zones . . . .
- (5) A charitable or philanthropic institution for which a petition was approved before May 6, 2002, is a conforming use. . .

Conclusion: Waiver provisions are not applicable, as no development standards apply and the use is not a special exception approved before May 6, 2002.

### **C. General Standards**

The general standards for a special exception are found in Section 59-G-1.21(a). The Technical Staff report and Petitioner's written evidence and testimony provide sufficient evidence that, with the recommended conditions of approval, the general standards would be satisfied in this case, as outlined below.

**Sec. 59-G-1.21. General conditions:**

- (a) A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:

- (1) Is a permissible special exception in the zone.

Conclusion: A charitable or philanthropic institution is a permitted use in the PD Zone.

Section 59-C-7.133 provides that the District Council may permit in the PD Zone any use that is permitted by special exception in the R-90 Zone, provided that if the use is proposed after the District Council has approved the Development Plan for the property, a petition for special exception must be filed with the Board of Appeals. The present application represents the Petitioner's effort to comply with this provision; a charitable or philanthropic institution is permitted by special exception in the R-90 Zone, and the Development Plan for the combined property has been approved by the District Council.

Section 59-C-7.133 authorizes the Board of Appeals to approve a special exception in the PD Zone if it finds that the use is consistent with the design standards of the development plan and satisfies the requirements of Article 59-G.<sup>2</sup> In the present case, the Hearing Examiner observes that the residential structure proposed to be adapted for the proposed special exception, with no exterior changes, is shown on the approved Development Plan in its current condition. Thus, the existing structure is not only consistent with the design standards of the Development Plan but is shown on the approved plan. For the reasons set forth in Part IV.B. and this Part IV.C., the Hearing Examiner concludes that the proposed special exception would satisfy the specific and general requirements for the use under Article 59-G.

- (2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

---

<sup>2</sup> The Board of Appeals may also approve a special exception in the PD Zone if it finds that the use is not consistent with the design standards of the Development Plan, but the special exception approval is contingent on the District Council's approval of an amendment to the Development Plan that incorporates the special exception use. See § 59-C-7.133(d)(2).

Conclusion: The proposed use would comply with the standards and requirements set forth for the use in Code §59-G-2.21, as detailed in Part IV.B. above.

- (3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny special exception must be consistent with any recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.

Conclusion: The evidence supports a conclusion that the proposed use would be consistent with the *2006 Woodmont Triangle Amendment to the Sector Plan for the Bethesda CBD*. The evidence does not point to any specific Sector Plan recommendation for the special exception site or the combined property. The proposed special exception would be consistent, however, with the Sector Plan's stated goal of increasing housing opportunities in the study area, and with its recommendations for a 65-foot height limit in the area of the special exception site and for building heights to be lower at the edges of the CBD than near the Metro station.

- (4) Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.

Conclusion: START HERE With

For all of the above reasons, the Hearing Examiner concludes that with strict adherence to the recommended conditions of approval, the proposed use would be in harmony with the general character of the neighborhood. As noted earlier, this conclusion depends heavily on strict adherence to the recommended conditions of approval. Accordingly, the Hearing Examiner has recommended conditions of approval that are designed to provide close oversight of the Petitioner's compliance through follow-up hearings, a Community Liaison Council and annual reports to the Board.

- (5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood

at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

Conclusion: The evidence supports the conclusion that with strict adherence to the recommended conditions of approval, the proposed use would not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, due to its moderate levels of activity, limited outdoor activities and significant landscape buffering.

- (6) Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

Conclusion: The evidence supports the conclusion that with strict adherence to the recommended conditions of approval, the modest level of activity generated would cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site.

- (7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.

Conclusion: Technical Staff reports that there are other special exceptions in the general neighborhood, mostly accessory apartments, but concludes that the addition of the use proposed here would not lead to adverse impacts on the area. Research by OZAH staff indicates that there is one accessory apartment in the general neighborhood and one private riding stable. (A former riding stable special exception was abandoned, and a 1966 application for a private club with 250 members and 40 to 50 events per year was denied.) In light of the moderate intensity of activity involved in this application, the Hearing Examiner concludes that with strict adherence to the recommended conditions of approval, the proposed use would not increase the number, intensity, or

scope of special exception uses in the area sufficiently to affect the area adversely or alter its predominantly residential character.

- (8) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

Conclusion: The evidence supports the conclusion that with the recommended conditions of approval, the proposed use would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site.

- (9) Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.

Conclusion: The evidence supports the conclusion that the subject property is not served by public sewer, but would continue to be served by other adequate public facilities with the proposed use.

- (i) If the special exception use requires approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of granting the special exception. If the special exception does not require approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Board of Appeals when the special exception is considered. The adequacy of public facilities review must include the Local Area Transportation Review and the Policy Area Transportation Review, as required in the applicable Annual Growth Policy.

Conclusion: Subdivision approval would not be required. The proposed use would generate far fewer than 30 vehicular trips during the weekday peak hours, so it is not subject to Local Area Transportation Review requirements. Policy Area Transportation Review requirements no longer apply, per the current AGP Policy Element.

- (2) With regard to findings relating to public roads, the Board . . . must further determine that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic.

Conclusion: The preponderance of the evidence supports a conclusion that with strict adherence to the recommended conditions of approval, the proposed use would have no adverse effect on the safety of vehicular or pedestrian traffic.

- (b) Nothing in this Article relieves an applicant from complying with all requirements to obtain a building permit or any other approval required by law. The Board's finding of any facts regarding public facilities does not bind any other agency or department which approves or licenses the project.

Conclusion: No finding necessary.

- (c) The applicant for a special exception has the burden of proof to show that the proposed use satisfies all applicable general and specific standards under this Article. This burden includes the burden of going forward with the evidence, and the burden of persuasion on all questions of fact.

Conclusion: The record substantiates a finding that Petitioner has met the burden of proof and persuasion.

#### **59-G-1.23 General Development Standards**

Pursuant to Section 59-G-1.23, each special exception must comply with the development standards of the applicable zone where the special exception is located, applicable parking requirements under Article 59-E, forest conservation requirements under Chapter 22A, and sign regulations under Article 59-F; must incorporate glare and spill light control devices to minimize glare and light trespass; and may not have lighting levels along the side and rear lot lines exceeding 0.1 foot candles. Furthermore, under Section 59-G-1.23(g), any structure constructed under a special exception in a residential zone "must be well related to the surrounding area in its siting, landscaping, scale, bulk, height, materials, and textures, and must have a residential appearance where appropriate. Large building elevations must be divided into distinct planes by wall offsets or architectural articulation to achieve compatible scale and massing." Under Section 59-G-1.26, a structure constructed pursuant to a special exception in a residential zone must, whenever practicable, have the exterior appearance of a residential building of the type otherwise permitted, and must have suitable landscaping, streetscaping, pedestrian circulation and screening.

Conclusion: As shown in the table on page 20, the proposed development would satisfy all applicable development standards of the R-200 Zone. As discussed on pages 21-23 above, the Hearing Examiner, the Planning Board and Technical Staff recommend granting the requested waivers from the side setback requirements for the parking lot and the driveway. The proposed development is exempt from forest conservation requirements because it would not result in clearing any existing forest or trees. See Ex. 7. Only modest signage is proposed, and a recommended condition of approval would require that such signage be in compliance with Article 59-F. No changes are proposed to existing exterior lighting, which is residential in nature and not obtrusive. Petitioner was not required to supply photometrics because it is evident that the existing residential-style lighting is appropriate for the site. No new structures are proposed, and the existing building is residential in character, with suitable landscaping and screening.

## V. RECOMMENDATIONS

Based on the foregoing findings and conclusions and a thorough review of the entire record, I recommend that Petition No. S-2668, which requests a special exception under Section 59-G-2.42 for a service organization, to be operated in an existing structure located at 7509 Needwood Road, Derwood, MD, known as Lot P1, Block B, Derwood Heights Subdivision, Tax Account No. 04-00048193, in the R-200 Zone, be **granted** with the following conditions:

1. Petitioner shall be bound by all of its testimony and exhibits of record, including the final Site Plan, Exhibit 30(a), and by any representations made by Petitioner's counsel that are identified in this report or in the Board's Opinion in this matter.
2. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits or a use-and-occupancy permit, necessary to implement the special exception as granted herein. Petitioners shall at all times ensure that the special exception use and facility comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.



Dated: November 21, 2006

Respectfully submitted,

---

Françoise M. Carrier  
Hearing Examiner